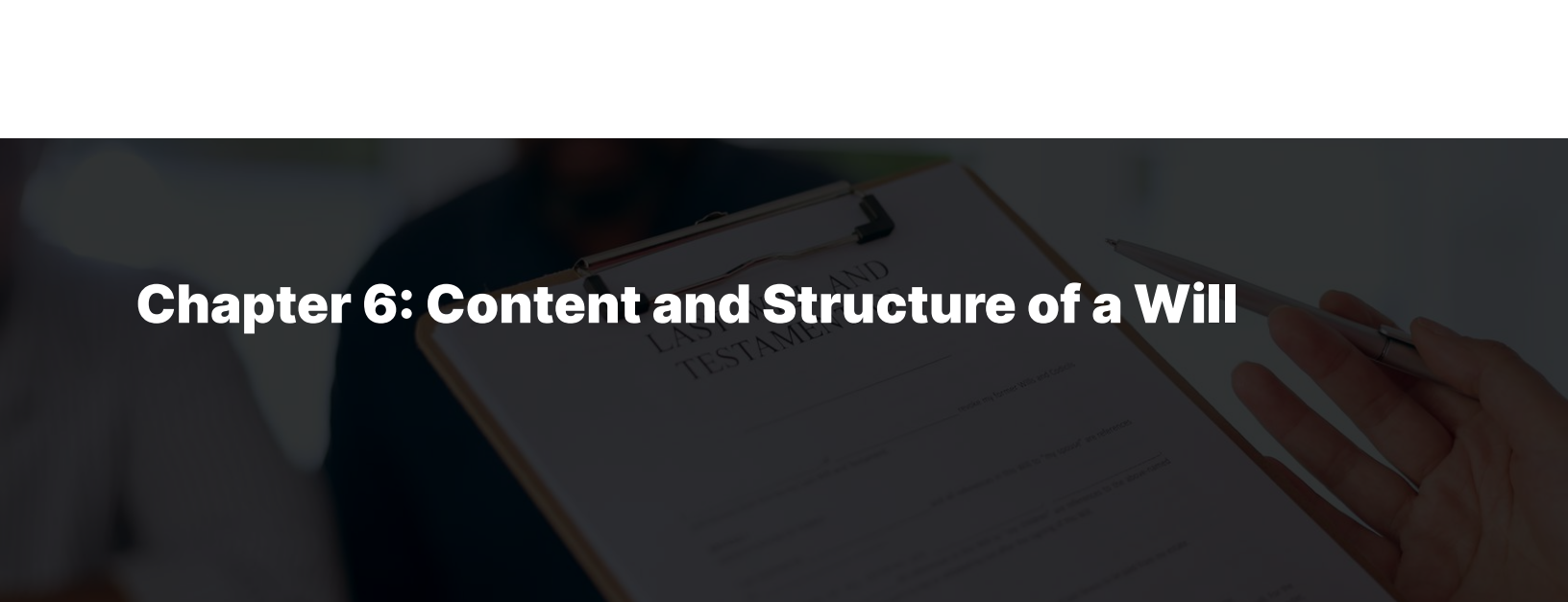




Chapter 6: Content and Structure of a Will

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6.1 Introduction

In Chapter 5 we looked at preliminary considerations relevant when preparing a will and how that translates into information you are looking for during the initial will preparation interview with your clients and advice and recommendations to consider.

In this chapter we look at the **reasons a person might want to make a will**, even in circumstances in which the intestacy provisions will achieve the same dispositive effect (i.e. who receives what) of a will; and the **formalities that must be followed** to ensure the will is valid. This chapter focuses on **non-dispositive terms of a will**.

Non-dispositive terms deal with administrative issues and other matters including the structure of the will and formalities.

Example

You are in a meeting with Mark and Kirstie who have recently moved to the area. The firm acted for them in connection with their house purchase which completed two months ago for £500,000. They are married and have just adopted Nellie, a two-year-old girl. Neither have made wills and would like to discuss whether it would be sensible to make one in their situation.



[CONTINUE](#)

6.2 Purpose of a will

6.2.1 Tax advantages

Explaining to your clients the available exemptions for tax purposes is a great opportunity to focus on what it is they truly want to achieve. It is not always the case that a tax-efficient will reflects the clients wishes. It is therefore necessary for your clients to understand what reliefs are available.

The starting point is that every person has a free estate of £325,000; this is known as the nil-rate band (NRB). The NRB can be reduced by gifts made seven years prior to a person's death. If a person's estate is under £325,000 (after taking into account all assets and liabilities) at the date of their death, and they have not made any lifetime gifts, there will be no inheritance tax (IHT) payable on their death.

Gifts to spouses and civil partners are exempt for IHT purposes. Looking at the above scenario if Mark is worth £10 million and gifts everything in his will to Kirstie, providing Kirstie survives Mark there will be no IHT payable on Mark's death.

In addition to the NRB, since 9 October 2007 spouses and civil partners have the ability to transfer their unused NRB to the survivor.

In the above example if Mark dies leaving everything to Kirstie, on Kirstie's death she would have a NRB of £325,000 and the transferrable nil-rate band (TNRB) of £325,000 (£650,000 in aggregate.)

In addition to the NRB and TNRB, and since 6 April 2017, families have had the opportunity to leave the residential home to either spouse/civil partner or lineal descendant and benefit from an additional IHT free element called the residence nil-rate band (RNRB). The RNRB amount for the tax year 2024/25 is £175,000. A spouse or civil partner can also pass their RNRB to the surviving spouse or civil partner, creating an total £350,000 tax-free element. When the RNRB is passed from one to another, this is known as the transferrable residence nil-rate band (TRNRB)

The RNRB and TRNRB are available for estates up to £2,000,000; over that the tax-free element tapers. If the estate is worth £2,350,000 or more, it loses the RNRB.

Looking at Mark and Kirstie's example. If their estate was worth £1,000,000 on the death of the survivor and they left their entire estates to each other, provided the survivor left his or her estate to their daughter, there would be no IHT to pay.

Mark and Kirstie's net estate On the death of the survivor - £1,000,000	
Less NRB	(£325,000)
Less TNRB	(£325,000)
Less RNRB	(£175,000)
Less TRNRB	(£175,000)
Taxable estate Nil	

Gifts to UK registered charities are also exempt for IHT purposes.

There are also reliefs available for certain assets.

Business assets that qualify for business property relief (BPR) can attract either 100% or 50% relief.

Note that property businesses do not qualify for BPR.

Agricultural property relief (APR), also at 100%, may be available if certain conditions are met for farmhouses, land that is farmed, and farming buildings. Although the application of APR is stricter, it may be that a combination of APR and BPR is available for a farming business.

BPR and APR are specialist subjects. Unless you know the rules so that you can advise on these areas, it is enough to be aware that they exist and be able to identify assets that may require additional advice.

IHT reliefs are available for woodland, and heritage properties that also qualify for IHT relief.



Link to Practice

The most common form of tax planning advice will centre on explaining the availability of the various nil-rate bands, and gifts to charity.

BPR and APR will also play a part. However, until you are familiar with the rules for qualifying for both, do not attempt to give advice on these areas. First, the test for whether an asset qualifies is at the date of the testator's death, not when the

will was made, and circumstances and tax rules may have changed in the interim.

You may also find that knowledge of APR is geographical. Lawyers that practice in Lincolnshire may come across estates that qualify for APR on a daily basis, whereas London-based lawyers may rarely, if ever, see clients in which considering APR is relevant.

CONTINUE

6.2.2 Care home fee planning

In Chapter 2 we noted that transferring an asset during a person's lifetime to avoid care home fees may well be treated as a deprivation of assets and set aside by the local authority if that was seen as the **sole** reason.

Where a couple own land as beneficial joint tenants they can nonetheless be advised to sever their joint tenancy creating a tenancy in common in equal shares and using their wills to ensure the survivor can continue to enjoy the property, or any replacement property with an immediate post-death interest trust. This advice should be as part of their general estate planning and not solely as a means to reduce the deceased's share in respect of an assessment for care home fees.

If the survivor goes into a care home, then it is likely that the property will be sold to pay for the care home fees. However, as the survivor only owns 50% absolutely the local authority can only apply its fees to that share. The other 50% will be invested for the surviving spouse to benefit from the income and the capital will be preserved for the remaindermen. On death

of the survivor, the capital will be aggregated with their estate for IHT purposes, and the remaining amount (after IHT is paid on the trust fund (if any)) will pass to the remaindermen.



Local authorities will carry out investigations in relation to any transfer of assets or change in ownership or structure. A severance to avoid the survivor taking the whole by survivorship may raise suspicion if made near to death and it appears to be being made solely to avoid care home fees.

CONTINUE

6.2.3 Choice of executors

It is easy to overlook the non-dispositive terms of a will and their importance.

The selection of preferred executors is an important part of the will. It is those individuals that will administer the estate.

Note that it is the executors that are legally responsible for disposing of the deceased's body. If there is a dispute between the family and the executor, it is the executor's decision that will be followed. This is a point that is often overlooked.

Far better to prepare a will appointing chosen executors (if applicable) than leave it to the beneficiary under the intestacy rules.

Consider a situation in which the application of the intestacy rules reflects your client's wishes. However, the burden of administering your client's estate may be too hard for the beneficiaries (e.g. parents). A client can achieve the same goal and save their parents the burden of administering your client's estate by appointing separate executors.

Testators can also appoint different executors for different assets (e.g. literary executors to deal with literary work of the testator, or executors to deal with business property only).

CONTINUE

6.2.4 Appointment of guardians

We have looked at guardians in some detail in Chapter 5 (see 5.4). The ability for testators to select who will look after their children should they die is a very good reason for a parent to make a will.

The uncertainty of what might happen in circumstances in which parents die leaving minor children can be avoided with a simple testamentary appointment.



The concept that a will is to make provision for close family, and possibly friends, after a person dies is often taken as financial provision. Provision in terms of parental responsibility is often overlooked, especially by parents who feel it is not worth making a will as they have little if anything of value to leave in it.

The ability to appoint testamentary guardians should in itself be a strong reason to make a will.

CONTINUE

6.2.5 Appointment of trustees

While it may be usual to appoint the same persons as executors and trustees, it is **not** mandatory and there may be circumstances in which it is preferable to appoint different trustees. A testator has that flexibility when making their will.

It may well be that a testator would like the executors and guardians to be the same but appreciates that a conflict may arise if the guardians are also in control of the child's trust funds. In order to avoid that, appointing different persons to be the trustees might be a solution to that issue.

A situation may also arise in which it may be sensible to appoint a professional trustee to deal with a main trust (e.g. discretionary trust). However, if a second trust is set up, say for the family dogs (a purpose trust), appointing friends as trustees of the purpose trust who are close by and understand dogs known to the dogs may make more sense.

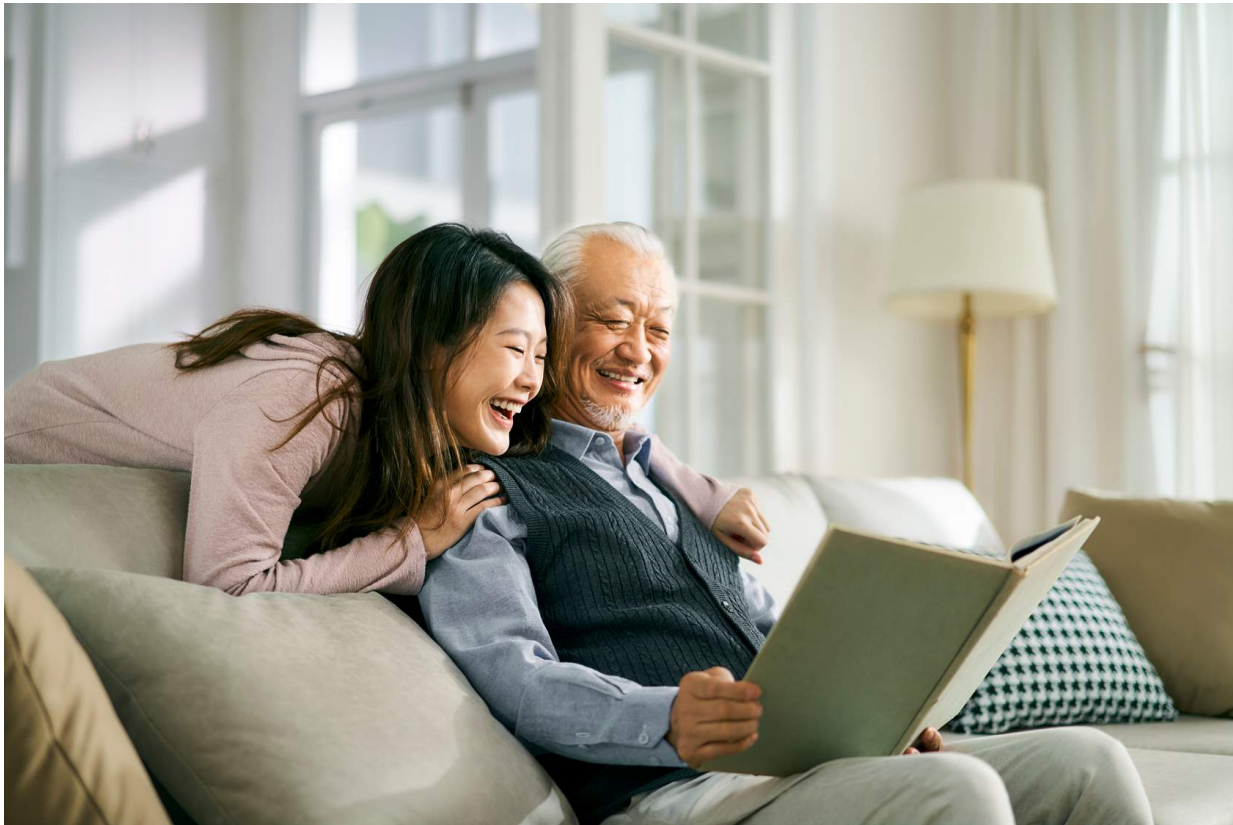
CONTINUE

6.2.6 Avoiding the intestacy rules

One of the main reasons for making a will is to control who will benefit from a testator's estate.

It is **not** always the case that a person will want the next in line to benefit from their estate.

Quite often this can be for practical reasons. Consider an unmarried individual who has no children and has an elderly parent who is comfortably looked after in a care home.



Under the intestacy rules that parent would inherit their entire estate. However, the parent may well not need any more funds and the inheritance may simply go to the local authority on care home fees.

If that is to be avoided the testator can make a will setting out where their assets should go on their death.

In the above example a parent can be included in a class of discretionary beneficiaries so that provision is still made for that parent if financial assistance is needed (e.g. new clothes, or other chattels that would benefit the parent).

Another common example of avoiding the intestacy provisions is that cohabitants do not feature in the statutory order of beneficiaries. Situations can arise in which an unmarried partner or partner not in a civil partnership for many years is entirely excluded because the deceased failed to make a will. If all assets were held in the name of the deceased, the partner can find themselves faced with losing their home. Additional complications can arise

if the deceased and the partner have children together. The deceased's assets will either pass to the children or held on a statutory trust until the children reach the age of 18. If the partner wants provision, they will have to make a claim against the estate and effectively their own children.

CONTINUE

6.2.7 Timing of inheritance

Mark and Kirstie's situation is a very good example of a situation in which parents will want to make provision for their child. It is, however, not uncommon for parents to want their children to inherit at a later stage in their lives.

This can be for any number of reasons, commonly it is because, should the worst happen and they both die, they would like their children to be more settled in life, to have finished full-time education and hopefully making their own way in life.

Under the intestacy provisions a child will take the estate absolutely at age 18. Many feel that is too young. There may be a concern that if large sums of money are received at 18 and before a perception of any "real life experience" their child may become susceptible to unwelcome attention from those that may seek to take financial advantage of someone with money at a young age or simply not know how to manage the money.

In these circumstances ages ranging from 21–25 are normally suggested by clients as a more appropriate age to inherit.

There is no right or wrong in a person's thought process as to why they might want to control the timing of inheritance. It is a matter of personal feeling and choice and testamentary freedom allows a person to make a decision as to where they want their estate to go and also when the beneficiary will receive the gift.

While the above example focuses on a parent-child relationship, selecting the timing for inheritance and making a gift age contingent can apply to a gift to any person. Consider the situation in which the primary beneficiary dies before attaining the age requirement and a default provision in the will that their children, if any, should take the legacy. Effectively the testator's estate passes to the grandchildren; the default provision can also be subject to an age contingent.

"I give the residue of my estate to my children who survive me and reach the age of 21 years and if more than one in equal shares absolutely.

Provided that if any of my children dies in my lifetime leaving a child or children who reach the age of 21 years then such child or children shall take and if more than one in equal shares]"



Link to Practice

Try and avoid age-contingent specific cash legacies (e.g. I give my nephew Dixon Ward the sum of £20,000 provided he reaches the age of 25).

Without going into too much detail, a situation can arise if the testator dies when the beneficiary is

aged 16 or over and the beneficiary dies before reaching the specified age with a taxable estate. In those circumstances the legacy would be taxable as an immediate post-death interest (IPDI) and although the tax would be payable from the legacy, it would then leave an insufficient amount for any default beneficiary. This would place the trustees of the legacy in breach, as after paying the tax on the legacy, there would no longer be the specified sum available.

CONTINUE

6.2.8 Charitable giving and its effect on IHT

Example

You have been invited to join a will instruction meeting. The meeting is being conducted by Arlene Granger a CILEx lawyer and CILEX probate practitioner. The client is Melody Swift who is 74 years old and has recently been discharged from hospital after recovering from a replacement hip operation.

Melody's affairs are fairly straight forward. She explains that she is a spinster and does not have any children. Her closest relative is her nephew Dean who helps her out regularly with her shopping and other small jobs around the house when he can.



Melody also has a love for dogs. She used to own dogs but decided against having another dog because of her health generally. Melody explains that she sold her house a couple of years ago and rather than buying a smaller place she decided to rent. This suits her as it affords her a level of flexibility and she does not have to worry about maintaining the property.

The majority of her assets are in managed funds which are a little in excess of £1,000,000. She doesn't need to touch these funds as her pension is sufficient to pay the rent, utilities and shopping with plenty left over for anything else she may need.

She would like to make a will in which 15% of her estate will go to a charity that rehomes dogs which is registered in the UK and 85% to Dean.

Melody understands that her estate is likely to attract IHT and asks Arlene to explain what the IHT position might look like and how much would Dean receive.

Arlene carries out a calculation based on an estate worth £1,000,000 at the time of Melody's death after deductions funeral costs, as follows:

£1,000,000 (net estate)

(£325,000) (free estate)

(£150,000) (15% net estate gift to charity – tax free)

£525,000 (taxable estate)

(£189,000) (IHT at 36%)

£336,000 (after tax)

£325,000 (free estate)

£661,000 (Dean will receive)

You are a little surprised that such an experienced private client practitioner can make such a fundamental mistake by applying IHT at the rate of 36% and raise the point with Arlene.

Arlene explains to you and Melody that since 6 April 2012 any estate in which the testator has left 10% or more of the net estate for IHT purposes to charity, will benefit from a reduction of IHT from 40% to 36% on the taxable estate.

The above example is a very simple illustration of how the lower IHT is applied, and achieved. The rules are contained in **Sch 1A Inheritance Tax Act 1984**.

Whether a charitable gift achieves the lower rate IHT or not is a binary position. In other words, the gift either meets the 10% test or it does not; there is no IHT tapering for a gift achieving say 9.9% of the net estate for IHT purposes. This can arise if a specific legacy to charity or charities is contained in a will and it is now down to the probate practitioner to ascertain whether the gift will result in a lower rate of IHT.

Calculating whether an estate qualifies for the lower rate IHT is not always a straightforward exercise as the estate is divided into three components:

1. SURVIVORSHIP COMPONENT	2. SETTLED PROPERTY COMPONENT	3. GENERAL COMPONENT
All assets that pass by survivorship.		

1. SURVIVORSHIP COMPONENT	2. SETTLED PROPERTY COMPONENT	3. GENERAL COMPONENT
Assets which are aggregated with the estate for IHT purposes because the deceased had a qualifying interest in possession (IIP) (e.g. IIP in which beneficiary became entitled to after 22 March 2006, IPDI)		

or a disabled persons trust.

1. SURVIVORSHIP COMPONENT	2. SETTLED PROPERTY COMPONENT	3. GENERAL COMPONENT
All other assets held by the deceased for IHT purposes, except assets in which the deceased had reserved a benefit (gift with reservation). It may well be the case that only the general component or general and survivorship components will apply.		

The exercise is to apply the 10% test to each component and establish whether the estate or part of it qualifies for the lower rate IHT.

To ascertain whether a component qualifies you will need to establish the amount given to charity and compare that against the baseline amount per component which is the value of the assets in the component less available NRB and TRNRB, exemptions (excluding the charitable exemption) and reliefs (e.g. APR/BPR).

Let us take Melody's situation. Instead of 15%, she would like to leave a specific legacy of £75,000 to charity, as she likes the idea of the charity receiving a set amount. Melody dies and her net estate is £1,000,000. At first glance she has not left 10% of her estate to charity. Below, look at the calculation by applying the donated sum to the baseline. In this scenario there is no survivorship or settled property components.

General component	
Net estate	£1,000,000
Less gift to charity	(£75,000)
Less NRB	(£325,000)
Taxable estate	£600,000
Add back in the gift to charity	£75,000
Baseline	£675,000
£75,000 of £675,000 = 11.11% This gift will qualify.	
The charity will receive	£75,000
Dean will receive	£1,000,000 (£75,000) (£325,000)
Sub-total	£600,000
IHT @ 36%	(£216,000)
Sub-total	£384,000

Plus free estate	£325,000
Distribution to Dean	£709,000

To see how valuable the charitable exemption and lower rate can be, let's look to see what Dean would have received if no charitable gift had been made.

Net estate	£1,000,000
Less free estate	(£325,000)
Taxable estate	£675,000
IHT @ 40%	(270,000)
Sub-total	£405,000
Plus free estate	£325,000
Distribution to Dean	£730,000

You can see how in this example a charitable gift of £75,000 will only cost the estate £21,000 (£730,000 – £709,000)



Link to Practice

For the purposes of will writing, if after explaining the availability of the lower rate IHT to a client who would like to leave money to charity, and would like to ensure their estate qualifies for the lower rate, consider the following options.

1. Leave a significantly large enough charitable legacy that is bound to qualify.
2. Consider creating a discretionary trust with all or part of the estate with a letter of wishes to ensure that at least 10% or more of the estate for IHT purposes is given to charity to achieve the lower rate IHT.
3. Use a formula within the gift of residue which will ensure that 10% of the taxable estate is given to the chosen charity and the estate will benefit from the lower rate IHT.

CONTINUE

6.3 Format and structure of a will

6.3.1 s9 Wills Act 1837

Example

You have been asked to join a will execution meeting held at your offices. You will act as one of the witnesses to the execution of the will.

On entering the conference room, you are surprised to see your old friend Jasmine who you went to school with. Your head of department Jose Garcia is conducting the meeting. He is well known in the firm for his no-nonsense approach to his work which includes meetings he conducts.

Jose reads out the content of the will to Jasmine who confirms she understands and is happy that the will reflects her wishes. You can't help but note the will refers to her child. As you did not keep in contact with her after school it is unsurprising you would not know of this.

Just before execution, a secretary knocks on the door to tell Jose that the client he has been trying to get hold of all week is currently on hold. Unimpressed with the interruption, Jose asks the secretary to ask his client to call back in half an hour.

You notice that on leaving, the secretary does not close the door properly. Jose is engaged with Jasmine, and so as not to disturb him, you get up to close the door. As you get to the door you notice that Arnold who you also went to school with is waiting in reception. You are distracted as he says hello and explains that he is waiting for Jasmine to finish her meeting so he can take her home. He has a baby with him.



You suddenly realise that Arnold and Jasmine are together and that's their baby. So as not to disturb Jose's conversation, you leave the conference room and close the door behind you and enter reception and congratulate Arnold and ask him what he's been up to since school. After about five minutes you realise that you should probably re-join the meeting and explain that Jasmine is almost finished and should be with him soon.

On re-entering the conference room, you see Jose staring at you with what can only be described as anger. You look at Jasmine and see that she has her will in front of her and she has signed it.

s9 Wills Act 1837 (WA 1837) (as amended by **s17 Administration of Justice Act 1982**) (**AJA 1982**) provides that **no** will is valid unless:

- (a) it is in writing, signed by the testator or by some other person in their presence and by their direction;
- (b) it appears that the testator intended by their signature to give effect to the will;
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) each witness either attests and signs the will or acknowledges their signature in the presence of the testator but not necessarily of any other witness.

These requirements do not apply to privileged wills, nor to statutory wills (see **5.8.2**) made by the court under the powers in the **Mental Capacity Act 2005 (MCA 2005)** on behalf of an adult person who lacks capacity.

Subject to these two exceptions, any will which does not comply with the **s9 WA 1837** requirements will be invalid, so it cannot be admitted to probate.

6.3.1.1 Achieving a valid execution

Assuming that the testator is able and willing to read the will and sign it for themselves, and the will is in a conventional format with a standard attestation clause, then a valid execution can be achieved as follows:

- the testator and two suitable witnesses remain together (i.e. in the same room) and are attentive throughout the process, to comply with the statutory requirement of “presence”;

- the two witnesses both watch the testator date and sign the will;
- each witness in turn then signs the will, watched by the testator and each other.

Following these steps complies with the **s9** procedure and no further evidence should be needed beyond the will itself to show it was validly executed. In fact, it goes beyond the statutory requirements for the sake of further evidential proof should anyone decide to dispute what and when it actually took place. While a date is not required by **s9**, an undated will could obviously prove to be contentious, and as further proof of execution, it is desirable that the witnesses see each other sign as well as having already seen the testator sign.

Going back to the scenario, you can now see that your actions have caused an issue in relation to Jasmine's execution of her will because you were not present when she signed.

She could acknowledge her signature in your presence. However, most professionally drafted wills have an attestation clause and that would likely have to be altered to reflect the change in execution.

Practically, it would be sensible to destroy that unexecuted version, print a new one, and remain present with Jose to ensure proper execution.

Covid-19 caused a number of issues for the private client practitioner, especially when trying to achieve proper execution of a will while observing social distancing, and trying to reduce risks for the elderly and vulnerable.

One way execution of a will can be achieved safely is for the will to be posted by those acting as witnesses. The testator will then read

through the will and confirm understanding and approval either through a window or by phone.

The testator will then place themselves in view through a window and the witnesses will witness execution through the window. The testator will then post the will back through the letterbox and the witnesses will complete their part.



Note that this is easy enough if the testator has a house with garden in which the witnesses can watch execution through a window, but not so easy if the testator lives in a second-floor flat.

Another option is for everyone to be present in a car park and for execution to take place on the bonnet of a car, again, while observing social distancing.



Why is it important the testator and witnesses remain present throughout the entire execution process? Looking at the above scenario, why would Jose be so angry at you? You were only gone for five minutes!

6.3.1.2 Video-witnessing of wills

As a temporary measure as a result of the Covid-19 pandemic, on 7 September 2020 the **Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020** was made.

The legislation applies to wills made on or after 31 January 2020 and on or before 31 January 2024.

This temporary measure was then extended to 31 January 2024. It was however not extended beyond this date and as from 1 February 2024 video witnessing of wills is no longer accepted in the UK.

Although no longer permitted, practitioners need to be aware of the proper criteria as it is conceivable they may encounter wills that have been executed in this way.

Set out below are the stages that would have to have been followed to execute a valid will using this process.

Step 1

Stage 1

- The person making the will ensures that their two witnesses can see them, each other and their actions.
- The will maker or the witnesses should ask for the making of the will to be recorded
- The will maker should hold the front page of the will document up to the camera to show the witnesses, and then to turn to the page they will be signing and hold this up as well.
- By law, the witnesses must see the will-maker (or someone signing at their direction, on their behalf) signing the will. Before signing, the will-maker should ensure that the witnesses can see them actually writing their signature on the will, not just their head and shoulders.
- If the witnesses do not know the person making the will they should ask for confirmation of the person's identity - such as a passport or driving licence.

Step 2

Stage 2

The witnesses should confirm that they can see, hear (unless they have a hearing impairment), acknowledge and understand their role in witnessing the signing of a legal document.

Ideally, they should be physically present with each other but if this is not possible, they must be present at the same time by way of a two or three-way video-link.

Step 3

Stage 3

- The will document should then be taken to the two witnesses for them to sign, ideally within 24 hours. It must be the same document.
- A longer period of time between the will-maker and witnesses signing the will may be unavoidable (for example, if the document has to be posted) but it should be borne in mind that the longer this process takes the greater the potential for problems to arise.
- A will is fully validated only when testators (or someone at their direction) and both witnesses have signed it and either been witnessed signing it or have acknowledged their signature to the testator. This means there is a risk that if the will-maker dies before the full process has taken place the partly completed will is not legally effective.

Step 4

Stage 4

The next stage is for the two witnesses to sign the will document – this will normally involve the person who has made the will seeing both the witnesses sign and acknowledge they have seen them sign.

- Both parties (the witness and the will maker) must be able to see and understand what is happening.
- The witnesses should hold up the will to the will maker to show them that they are signing it and should then sign it (again the will maker should see them writing their names, not just see their heads and shoulders).
- Alternatively, the witness should hold up the signed will so that the will maker can clearly see the signature and confirm to the will maker that it is their signature. They may wish to reiterate their intention, for example, saying: “this is my signature, intended to give effect to my intention to make this will”.
- This session should be recorded if possible.

Step 5

Stage 5

If the two witnesses are not physically present with each other when they sign then step 4 will need to take place twice, in both cases ensuring that the will maker and the other witness can clearly see and follow what is happening.

While it is not a legal requirement for the two witnesses to sign in the presence of each other, it is good practice.

Consideration may be given to the drafting or amending of the attestation clause in a will where video-witnessing is used. The attestation clause is the part of the will that deals with the witnessing of the will maker's signature. For video-witnessed wills it may be advisable to mention that virtual witnessing has occurred, along with details of whether a recording is available.

To date there has not been any challenge to a will that was executed under the new video-witnessing measures. However, the two-year measures have only recently been introduced and it may be some time before we see any challenges issued.



Activity

As an exercise, connect up on video conferencing (Zoom is free for 45-minute sessions), possibly with other CILEX students on this course, and follow the stages for the remote

execution of a will.

1. Did any issues arise when witnessing execution?
2. How easy was it for the witnesses to see the document, and execution?
3. Did the screen freeze for anyone during execution?
4. Review the recording, did any issues arise on reviewing that were not apparent during execution?
5. If all went well, consider what issues may arise that may call into question the validity of a will executed in this way.

CONTINUE

6.3.2 In writing

There are no restrictions about the materials on which or by which a will may be written, or the language used; nor is any particular form of words necessary. The **Interpretation Act 1978** provides that, where any statute uses the word *writing*, that word is construed as including *typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form*. So, a will in shorthand or in Braille is acceptable. If a will is written partly in ink and partly in pencil, there is a presumption that the pencil writing was *deliberative only*; the words in pencil will not be admitted to probate unless there is evidence that the testator intended them to be final.

A will written on a wall in Ukrainian was held to be valid (*Re Slavinsky's Estate [1989]*).

6.3.3 Signature

Normally, the testator signs the will, preferably with their usual signature, though any mark made by the testator and intended to be their signature will be effective. A good illustration of this point is ***In the Goods of Chalcraft [1948]*** where the testatrix, who was dying, signed “E Chal” but was unable to complete her signature. It was held to be a sufficient signature, on the basis that it was intended to be the best she could manage in the circumstances. In the ***Estate of Cook [1960]*** the will began with the name of the testatrix and ended with the words “Your loving mother”, which the court accepted was meant to be her signature.

More recently, in ***Perrins v Holland [2010]*** the signature of the testator was validly made using a rubber stamp which he held and with which he made his mark on the will.

In ***Payne and Another v Payne [2018]*** the Court of Appeal had to decide if the mere printing of the witnesses’ names in the absence of a traditional signature was acceptable. The witnesses said they had seen the testator add his signature and then filled in details of their name, address and occupation but had not actually signed the will because there was insufficient room to make their signatures. Following the spirit of the pre-1982 unamended wording of **WA 1837** which required witnesses to “subscribe”, the Court of Appeal concluded that the requirement in **s9** means, as it has always done, that the witnesses merely have to write their names with the intention that the act of writing should operate as an attestation. This will was deemed valid, even though the witnesses did not “sign” in the traditional sense.

CONTINUE

6.3.4 Signature by another

WA 1837 permits signature by another. To be effective, this must be at the **direction** of the testator and in their mental and physical **presence**. Anyone (including one of the witnesses) may so sign, using their own or the testator’s name.

In ***Barrett v Bem [2012]*** the court said that if a testator chooses to sign the will themselves, as opposed to directing another person to sign on their behalf, they can be assisted by another person provided that the testator makes some ***“positive and discernible contribution to the signing process”***. So, if the testator holds the pen but has to have their hand steadied while writing their signature, this would suffice as their signature. However, in this case, the testator just held the pen while his hand was guided across the page by a helper, so it did not suffice; the signature was the helper’s rather than the testator’s – but could it be said that the helper signed at the testator’s *direction* as permitted by **s9**? The President of the Court of Appeal said that for a valid *direction*, there must be some positive communication (whether verbal or non-verbal) by the testator. In this particular case, the Court of Appeal found that the evidence fell short of establishing that this had been the case.



Do you think it is right that if a beneficiary is one of the two witnesses to a will, that beneficiary will lose their legacy (**s15 WA 1837**), and yet a person who is also a beneficiary can sign on behalf of testator, provided the execution complies with **s9 WA 1837**?

CONTINUE

6.3.5 Intention to create a will

The court has to decide if there was the required intent for the signature to give effect to the will.

In **Wood v Smith [1992]** the testator, T, made a handwritten will which began "My will by T of (address)." T did not sign it at the end of the will, where the two witnesses signed and one of them pointed out to T that he had not signed. He replied "Yes I have, I have signed it at the top. It can be signed anywhere."

At first instance, the judge refused to accept this on the basis that T should have signed **after** making the dispositive provisions (i.e. the clauses of the will making gifts), which had not happened here. The Court of Appeal rejected this argument, holding that as long as the writing of the will and the appending of the signature were all one operation, it did not matter where on the document or when, in the course of writing, the signature was appended.

This "intention" of the testator may have to be established by an affidavit of due execution if this cannot be deduced from the face of the will; for example, if the signature appears in an unusual position, or on an envelope containing the will. If the will is written on more than one page (only the last being duly executed) and the pages are not securely fastened together, evidence of due execution will be needed. It will be sufficient to show that the pages were (at the time of execution) held together by the testator's finger and thumb, or pressed together on a table by the testator with their hand, or even that (though not touching) they were then in the same room under the testator's control.

What if the testator signs the wrong will? In **Marley v Rawlings [2014]** the deceased and his wife had two natural children (the defendants) who were not close to them. The couple engaged a solicitor to make mirror wills in which they each left their entire estate to the other and in the event of the other spouse not surviving, the whole estate was to go to the claimant, an individual who they had unofficially adopted when he was 15 and had since treated as their son. There was no doubt that they intended to benefit the claimant alone on the death of Mr Rawlings, who was the survivor.

Unfortunately, they each executed the will meant for the other and the mistake went unnoticed until after Mr Rawlings died. The two defendants would have been entitled in the event of the deceased having died intestate, so the claimant brought a claim based on rectification of the will under **s20 AJA 1982**.

A preliminary issue was whether s9(b) WA 1837 was satisfied. The defendants argued there was no valid will to rectify because Mr Rawlings did not intend to sign the will which he actually signed (he had obviously meant to sign his own will). However, Lord Neuberger, giving the unanimous judgment in the Supreme Court, said:

“it is unchallengeable that Mr Rawlings signed [Mrs Rawlings’ will], and that he did so, both on the face of the document, and as a matter of fact, with the intention of it being HIS last will and testament. Thus, whatever else may be said about the document, ... it was, ... signed by Mr Rawlings, in the presence of two witnesses, on the basis that it was indeed his will.”

Having established that Mr Rawlings had signed “his” will, albeit one that contained his wife’s wishes rather than his own, the Supreme Court was then able to consider the claim for rectification (see further 9.3.5.1).

Another case where this aspect of **s9 WA 1837** was considered was ***Guthrie v Morel [2015]***, where the alleged will was in fact a letter written by the testator to his solicitor setting out a list of gifts and stating that this was his full and final expression of wishes regarding his will. The letter was signed, dated and witnessed by two people. The trial judge followed the reasoning applied by Lord Neuberger and held the letter was intended to be the deceased’s will.

CONTINUE

6.3.6 Witnesses

There are several important points to consider here. First, the intended signature must be completed in the presence of at least **two witnesses present** at the same time. It is sufficient if the witnesses see the testator writing their signature. They do not need to know the contents of the will, or even that the document is the testator’s will.



Alternatively, the **testator's signature might already be on the will**, in which case, the testator must acknowledge their signature in the presence of **the witnesses**, who **must see or have the opportunity of seeing the signature** – it must not, therefore, be covered (though the rest of the will can be). The acknowledgment may be by words or conduct but must be made to at least two witnesses simultaneously.

As to **the capacity of the witnesses**, there are no particular rules, but the witnesses must be both **"mentally and bodily present"** (e.g. not drunk, of unsound mind or asleep). A blind person who is unable to see the signature cannot be a witness. Bearing in mind that they may be required to give evidence of due execution, witnesses should ideally not be too old or too difficult to trace.

A beneficiary or his/her spouse/civil partner is a competent witness and the validity of the will is not affected though, by virtue of **s15 WA 1837**, the beneficiary loses his legacy under the will, unless there were at least two other independent attesting witnesses or the will is

subsequently republished by a codicil witnessed by at least two independent witnesses. We will consider **s15 WA 1837** in more detail later in this module.

Burgess v Penny and Another [2019] demonstrates the importance of following **s9 WA 1837** to the letter. Here, the Chancery Division was asked to rule on a dispute over two wills made by Freda Burgess. Although Freda was elderly, there was no suggestion that she lacked capacity. Also, on the facts the court found that there was no lack of knowledge and approval of her later will on her part; in fact, her son, at her request and in her presence, shredded her previous will and thus revoked the earlier will presumably in her expectation that the later will was valid. On the evidence it was found that Freda had not signed the later will in the presence of one of the witnesses, so the presumption of due execution had been successfully displaced and her will had not been executed in accordance with the law.

6.3.6.1 Witnesses attest and sign, or acknowledge their signature in the presence of the testator

Best practice is for the witnesses to sign in the testator's presence (as required) and for the witnesses to make those signatures in the presence of each other (this is not essential under **s9 WA 1837** but each witness can later, if necessary, give evidence they each saw the other sign). Their signatures must be placed on the will – the exact position is immaterial – with the intention of validating the testator's signature.

Alternatively, **acknowledgment of a previous signature** by a witness in the presence of the testator is allowed, although this is simply to save a will which might otherwise have been improperly executed, as in ***Couser v Couser [1996]***. T completed and signed a printed will form. He took it to his friends, Mr and Mrs B, for witnessing. Mrs B signed the will, although her husband was not present. Mr B later joined his wife and T. Mrs B objected that the will would not be valid if Mr B witnessed it now, but T persuaded Mr B to sign by showing him both his own and Mrs B's signatures. When Mr B signed, both T and Mrs B were present, although Mrs B continued to claim that the will was not valid.

It was held, first, that T had acknowledged his signature in the presence of two witnesses (**s9(c)**); second, Mrs B's continued protests about the validity of the will were sufficient to

show acknowledgment of her signature in the presence of T (**s9(d)**). Therefore, **s9** was completely satisfied.

Whether the witnesses sign or acknowledge, **the testator's mental and physical presence throughout is necessary**. It is sufficient if the testator could have seen the witnesses sign or acknowledge if they had wanted to, or could have done so were they not blind.

CONTINUE

6.3.7 Attestation clause

As a matter of standard practice, an attestation clause should always be included in a will, reciting compliance with the formalities in **s9 WA 1837** and so raising a **presumption of due execution**. A short form attestation clause, at the end of the will where the testator and witnesses sign, may say:

“Signed by the testator in our presence and then by us in [his or hers].”

The lack of an attestation clause does not invalidate a will; s9 WA 1837 expressly says that *no form of attestation shall be necessary*. If there is no attestation clause, the Registrar must require an affidavit of due execution. If no evidence is obtainable, the court may admit a will to probate if it appears to have been duly signed and witnessed – but probably only after a hearing by a judge involving, inevitably, delay and extra expense.

Where the will is signed by someone other than the testator or, for example, where the testator is blind or illiterate, special forms of attestation clause should be used. If the testator is both unable to read and sign their name, such a clause might say:

“Signed by [name of person signing] with [name of the testator] in his presence and at his direction, the will having previously been read over to him by [name of reader] and the testator having acknowledged his complete understanding and approval of the contents of the same, in our presence and then signed by us in his presence.”

In ***Sherrington v Sherrington [2005]*** the Court of Appeal held that the strongest evidence is necessary to rebut the presumption of due execution if a will is signed and witnessed and contains an attestation clause, that is, where the will is, *prima facie*, properly executed. In that case, the testator was a solicitor but his will had been written out by his stepdaughter and purportedly read out to him by telephone before he “signed” it, in haste, on his way to an airport. The will was relatively short and his wife was the main beneficiary. The evidence of the witnesses, one of whom had scant English, suggested that they had little knowledge of the requirements for wills and that they did not know they were witnessing a will. Notwithstanding the unusual circumstances, the Court of Appeal reversed the earlier first instance decision and upheld the validity of the will by saying that in the absence of the strongest evidence, the intention of the witness to attest is inferred from the presence of the testator’s signature on the will, the attestation clause and the signature of the witness.

However, in ***Ahluwalia v Singh and Others [2011]*** the will was held invalid after the claimant successfully alleged that it was not, in fact, signed by the testator in the presence of both witnesses when present at the same time despite the attestation clause reciting that this was the case. Having heard evidence from the two witnesses, and finding one more credible than the other, the judge said that the claimant had satisfied the burden of producing the strongest evidence.

CONTINUE

6.3.8 s24 Wills Act 1837

s24 WA 1837 states: *Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed*

immediately before the death of the testator, unless a contrary intention shall appear by the will.



Suppose a will says *"I give to Chloe my motor vehicles, free of tax"*. When the testator made the will, he had three cars but when he died, he had five cars.

1. Does Chloe inherit three cars owned at the date he made the will (if they still exist) or the five cars owned at the date of death?
2. Does it matter if the cars at death no longer include the cars owned by the testator when he made the will?

By virtue of **s24**, unless a contrary intention appears from the will, it speaks and takes effect as regards **property** as if it had been executed immediately before the death of the testator. So, if the subject matter of the gift is generic and so described in such a way as to be capable of increase or decrease between the date of the will and the date of death, then the will is said "to speak from death". So, Chloe is entitled to all five cars owned by the testator at the date of death whether or not they include the cars as at the date of the will. The same applies to a gift of *"all my shares in ABC plc"*.

However, **s24** gives way to a contrary intention in the will. Consider a gift of *"my 2,000 shares in ABC plc"*. In this case, the testator has clearly identified particular shares which they own at the date of the will. A contrary intention may be expressly stated, for example, *"I give the grand piano which I now own"*. It may also be implied just from the use of the word **"my"** in *"I give my grand piano"*. Unlike the gift of the cars, this is not a gift by

description capable of increase or decrease but, rather, a gift of a particular asset. So, the court is likely to say the testator meant the grand piano at the date of the will, rather than a different one that might be owned at the date of death.

The importance of this construction is that if the original piano no longer exists at the date of death, the gift fails because of ademption.

s24 WA 1837 applies only to property and not to people. So, as to the beneficiaries of the gift, in the absence of contrary intention, the will **speaks from the date of execution**. A simple gift to *"the eldest child of X"* is construed as a gift to the person fulfilling that description at the date of the will. If that person predeceases the testator, the gift fails and does not pass to the eldest surviving child, unless it goes on to say *"as shall be living at my death"*.

If there is a gift to a beneficiary by description (e.g. *"to the wife of X"*) and, to the testator's knowledge, no one fulfils that description at the date of the will, the gift is construed as one to the first person to fulfil that description – that is, to the first person X marries after the date of the will. Once someone has fulfilled the description (whether at the time the will was executed or subsequently), the gift is construed as a gift to that person even if, for example, X later divorced that person and remarried before the testator's death.

This rule regarding beneficiaries does not apply to class gifts, including those where there is an individual gift to each member of the class. Nor does it apply to a gift to the holder of an office which, **prima facie**, takes effect as a gift to the holder of the office at the date of death – again, unless there is a contrary intention in the will. So, a gift to *"the Vicar of the Parish of Endcliffe"* would normally be construed as the person who holds that office at the testator's death. If the gift had been expressed as to *"the Vicar of the Parish of Endcliffe at the date of this will"*, obviously that shows a contrary intention.

Finally, remember the effect of republication. If, applying the above rules, the will is taken to speak from the date of its execution, the effect of any codicil republishing the will is to make the effective date that of the codicil – again, unless a contrary intention appears.

CONTINUE

6.4 Codicil

6.4.1 Content of a codicil

A codicil is a testamentary document which supplements the terms of an existing will by adding to it, amending it or by revoking it, wholly or in part. Only minor adjustments should, in practice, be made in this way. Any major changes are best made by making a new will.

The important point is that the requirements for a valid codicil as to capacity, intention and s9 formalities are the same as those for a will

Where a codicil is made to a will, it has the effect of confirming the will. The confirmed will is treated as operating from the date of the codicil.

A codicil may also be used to revive a revoked will that has not been destroyed. Again, the revoked will becomes valid and operates from the date of the codicil.



Link to Practice

Codicils are useful when making minor changes to a will. For example, a named executor has died and the testator wants to appoint a new executor without having to make a new will.

It is recommended that some minor amendments trigger a new will, for example, when the testator wishes to reduce a legacy or remove a beneficiary, even though a codicil will have the same effect. As both will and codicil will be a matter of public record when a testator dies, a beneficiary will be able to see that they were cut out from the will or their legacy has been reduced. This may trigger bad feeling between the excluded beneficiary and other beneficiaries, quite often family members. Preparing a new will is a simple way for the testator to achieve their wishes without drawing attention to the change in wishes.

CONTINUE

6.4.2 Risks of making a codicil

Codicils appear to be a simple solution to making alterations to a will without having to make a new will. Issues can arise because a codicil is a testamentary document.

If not kept with the will, there may be nothing to identify its existence and a will may be admitted to probate without the codicil.

There is no limit to changes that can be made and therefore the number of codicils there may be to a will. Multiple codicils may contradict each other, which can cause problems when administering an estate.

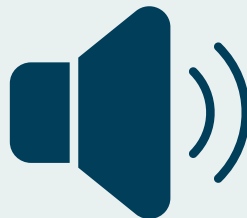
To be valid a codicil must be executed in accordance with **s9 WA 1837**. Because they are perceived to be relatively straight forward, there is a greater temptation for a testator to save the costs of having a codicil professionally drafted and make one themselves. However, if it is **not** executed in accordance with **s9**, it will **not be valid**.

Homemade codicils can be poorly drafted which can cause problems if the wording used is ambiguous.



Link to Practice

As a codicil reconfirms the will as at the date the codicil is executed, always check to ensure any generic reference to individuals is still accurate. If, for example, a legacy has been left to the testator's nephew and since executing the will the testator now has more than one nephew, the codicil should reflect the updated position. If the codicil is silent on this it will become impossible to determine which nephew receives the legacy.



Law Explained: Care home fees

This recording discusses the important issue of care home fees and the tricky issue of deprivation of assets, which often arises during will planning. Financial support for care home fees is very limited in England, though rather more generous in Wales.



5:31

1x



Audio Transcript

Hello in this presentation I'm going to look at a particular aspect of very serious concern to many clients. Whilst it is good advice to make a will as soon as you have any assets to speak of, to ensure that those assets are distributed on your death to those that you really want to benefit, it is true that the vast majority of people who start think about making a will are older.

One of the aspects dealt with in Chapter 6 is care home fee planning. The charity Age UK produces some very useful fact sheets which, though they are written for laypeople, can still provide some useful advice for lawyers.

Whilst governments over the years have battled with the issue of the cost of social care and there is pressure to make social care free, currently, unlike health care, social care in England is means tested. Therefore, if a client is likely to need social care, it is almost certain that they will need to make some sort of contribution towards the cost of that care. The amount a client will pay will depend on the level of need and the assets they have available. Relevant clients should ask for an assessment of needs from their local authority; the authority will also carry out a financial means test which will determine the level of contribution.

There are capital limits which set the level of capital that a person can have while qualifying for financial support from their local authority. For people receiving care other than as a permanent resident in a care home, local authorities have discretion to set higher capital limits if they wish.

A person with assets above the upper capital limit is responsible for the full cost of their care in a care home. A person with assets between the capital

limits will pay what they can afford from their income, plus a means-tested contribution from their assets (calculated as £1 per week for every £250 of capital between the capital limits). A person with assets below the lower capital limit will pay only what they can afford from their income.

For the financial year 2024 to 2025 the capital limits are £23,250 for the upper capital limit and £14,250 for the lower capital limit.

It is not unusual for a client to approach you with a proposal to give away their home, which is usually their main asset, to a family member, with the aim of avoiding having to pay care home fees. However, they should be aware that this could be regarded by the local authority as a deliberate deprivation of assets. Deprivation of assets applies when a person intentionally reduces their assets so that these won't be included when the local authority calculates how much they have to pay towards their care.

Councils consider two things when determining whether there has been a deliberate deprivation of assets firstly the donor must have known at the time that they disposed of their property that they needed or could in the future need care and support, and secondly avoiding paying for care must have been a significant reason for the donor giving away their property. If the council determines that your client has deliberately deprived themselves of assets, it could still include the value of the assets that the client no longer owns when it does the means test assessment. This could result in significant stress for the client, who will effectively be in a position where they are required to pay for care whilst not actually owning the means to do so. Giving away the property sooner rather than later seems to be the best advice.

If a person moves into residential care the value of their former home is disregarded from the financial assessment for so long as their partner remains living in it. It can also be disregarded if another relative lives there; for example, a child under 18 or a relative aged 60 or over. The relative must have been living in the property when the client goes into residential care. The local authority has discretion to disregard a property in other circumstances; for example, where a friend had given up their home to look after the individual going into care, who would become homeless if the property were sold.

The value of the property will be assessed as at current market value of the individual's beneficial interest at the time of the financial assessment but certain deductions can be made to represent the expenses that would be involved in selling the property.

As pointed out in Chapter 6, where your client owns their property with their partner as beneficial joint tenants, it may be advisable for the joint tenancy to be severed.

Suppose Tim and Elisa buy a property together which they own as beneficial joint tenants. Some years later Tim develops dementia and eventually needs to move into a care home. Tim and Elisa's property will not be sold to pay for the care home fees whilst Elisa is still living there. However, if she were to die her share in the property would survive to Tim, and the entire property would then be available for the payment of the fees. If, on the other hand, they had held as beneficial tenants in common, Elisa's share will be available for disposal as she wishes via her will or intestacy, and it will not be available for the payment of the care home fees. Of course, timing of such a severance is important, to ensure that the severance itself is not seen as deliberate deprivation of assets.

As you can see this is an area of some complexity. It is useful for all wills and probate lawyers to have a basic understanding of the law in this area but you should always consider seeking specialist advice if you feel the situation warrants it.





Law in Context: Inheritance tax planning

Inheritance tax planning is a very important area and when preparing a will, the lawyer needs to obtain full details from their client on all assets and previous gifts, to ensure the client is advised correctly and fully.

Look at the useful guide and watch the short video provided by consumer organisation Which? at the following link: [Inheritance tax: thresholds, rates and who pays](#)

Use your own details, or those of a friend or relative, to try out their IHT calculator.

CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 3 questions in this knowledge check.

Question 1 of 3

Which of the following testators have made valid wills?

(Select all that apply)

- ☐ Chen's will is handwritten in Chinese characters.
- ☐ Gloria was seriously ill when making her will, and could barely hold the pen. However, she managed to write her initials.
- ☐ Ulrika signed her homemade will at the top, not the bottom. It was properly witnessed.
- ☐ Frank has a neurological condition which affects fine motor skills. He asked his friend Glen to sign the will for him.

SUBMIT



Complete the question above before moving on.

Question 2 of 3

Olivia asks her friends Freddy and Lawrence to come over for tea to witness her will. Freddy is entitled to a small gift of £300 under the will. When the friends arrive, Olivia shows them her will, which she has already signed. At the time, Lawrence was busy letting the dog out. Freddy signed as a witness then went out to play with the dog. Lawrence then signed.

Which of the following statements about the validity of her will are correct?

- ☐ The will is invalid because the witnesses are lay people, not legal professionals.
- ☐ The will is invalid because Freddy is both a witness and a beneficiary.
- ☐ The will is invalid because Freddy was not present when Lawrence signed.
- ☐ The will is invalid because Lawrence was not paying attention when Olivia showed the friends her signed will.

SUBMIT



Complete the question above before moving on.

Question 3 of 3

Julian's will states: ***'I give my collection of antique books to the wife of my brother Dick.'***

At the date of the will, Dick was married to Anne. He later divorced Anne and at the date of Julian's death was married to Georgina.

When Julian made his will, he had three antique books worth about £400 in total. By the date of his death, he had increased his collection to around 50 books, total value around £10,000.

Which of the following statements about this legacy are correct?

- ☐ Anne will receive the full collection of 50 books.
- ☐ Georgina will receive the full collection of 50 books.
- ☐ Anne will receive the three antique books owned at the date of the will.
- ☐ Georgina will receive the three antique books owned at the date of the will

SUBMIT



Complete the question above before moving on.

6.5 Summary

Tax advantages of a will

- Nil-rate band (NRB) £325,000 (less lifetime gifts)
- Transferable nil-rate band (TNRB) between spouses and civil partners
- Residents nil-rate band (RNRB) (£175,000): Property gifted to spouse or lineal descendant
- Transferable RNRB (TNRB) between spouses and civil partners
- Gifts to charity are 100% exempt from IHT
- IHT reliefs available for business property (BPR) and agricultural property (APR)

Figure 6.5a



Reasons to make a will

- Care home planning (consider severing joint tenancies and creating IPDI for spouse/civil partner)
- Choice of executors (consider different executors for specialist assets, e.g. business/literary etc.)
- Appointment of guardians (cannot override any person with parental responsibility)
- Appointment of trustees (consider different trustees to guardians in respect of any trust for children)
- Direct who inherits and avoids application of the intestacy rules
- Control when a beneficiary will inherit (e.g. age contingency for a child or children)

Figure 6.5b



Charitable giving

- Gifts to charity 100% exempt from IHT
- If gift to charity is 10% or more of baseline, IHT will reduce to 36%
- Baseline calculated by taking value of assets and removing NRB, TRNB, exemptions (excluding charitable)
- Consider leaving a significantly large charitable gift in will to qualify
- Consider discretionary trust and letter of wishes asking trustees to achieve lower rate IHT
- Consider using a formula in the will to achieve reduced rate IHT

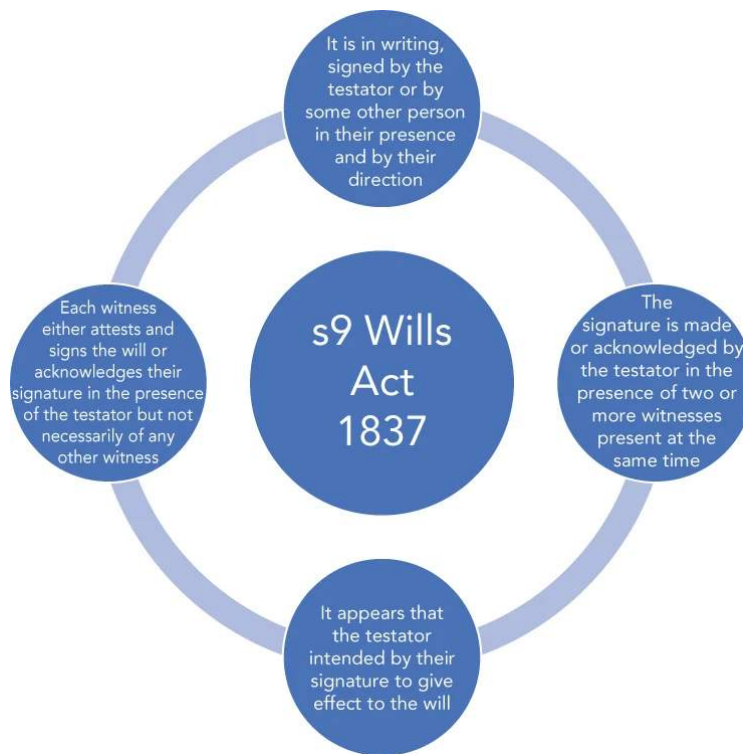
Figure 6.5c



s9 Wills Act 1837

- It is in writing, signed by the testator or by some other person in their presence and by their direction
- The signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time
- It appears that the testator intended by their signature to give effect to the will
- Each witness either attests and signs the will or acknowledges their signature in the presence of the testator but not necessarily of any other witness

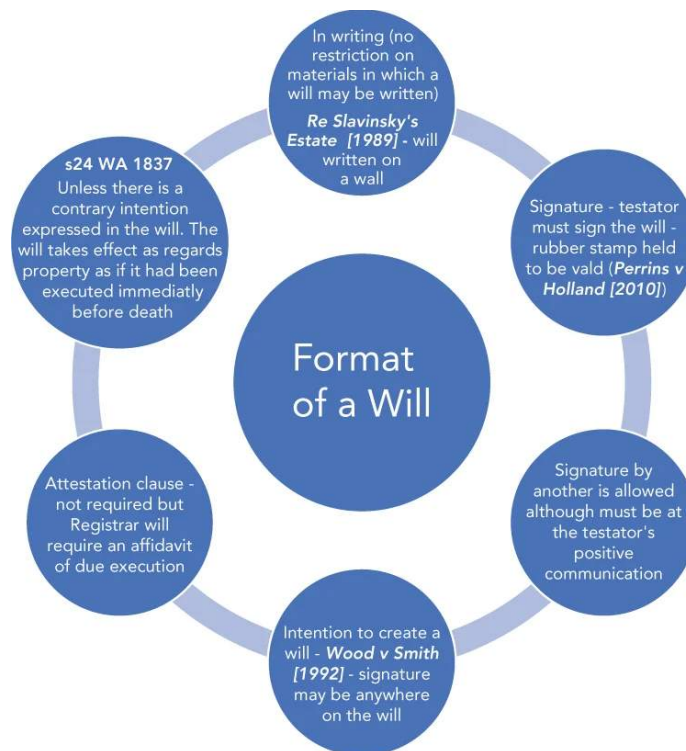
Figure 6.5d



Format of a will

- In writing (no restriction on materials in which a will may be written): *Re Slavinsky's Estate [1989]* – will written on a wall
- Signature – testator must sign the will; rubber stamp held to be valid (*Perrins v Holland [2010]*)
- Signature by another is allowed although must be at the testator's positive communication
- Intention to create a will – *Wood v Smith [1992]* – signature may be anywhere on the will
- Attestation clause – not required but Registrar will require an affidavit of due execution
- s24 WA 1837 – Unless there is a contrary intention expressed in the will. The will takes effect as regards property as if it had been executed immediately before death

Figure 6.5e



Witnesses

- Must be at least two witnesses who are present throughout
- Witnesses must be “mentally and bodily present” (e.g. not drunk, of unsound mind, or asleep)
- A blind person who is unable to see the signature cannot be a witness
- Witness should not be a beneficiary or the spouse/civil partner of the beneficiary in order to avoid losing the gift under s15 WA 1837

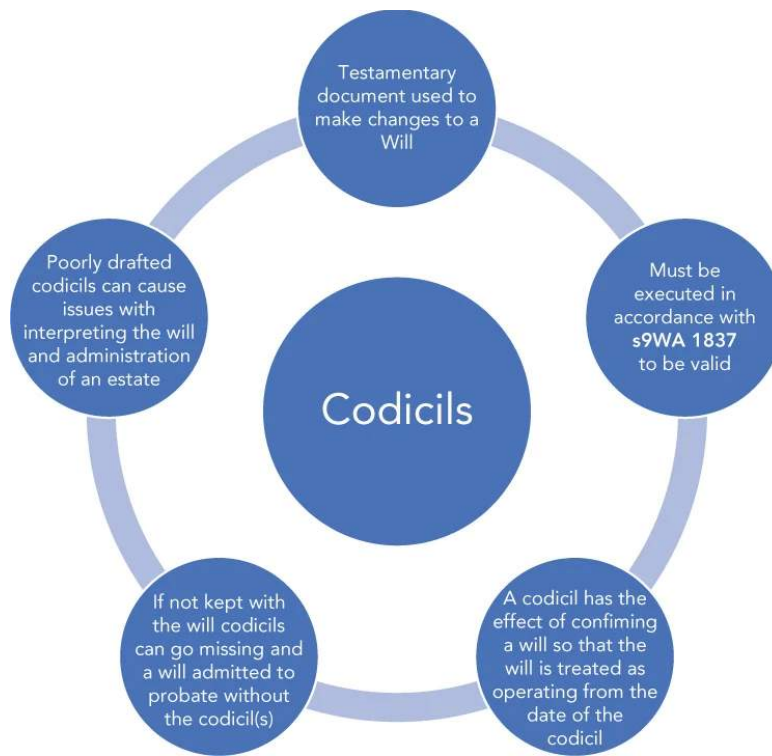
Figure 6.5f



Codicils

- Testamentary document used to make changes to a Will
- Must be executed in accordance with s9 WA 1837 to be valid
- A codicil has the effect of confirming a will so that the will is treated as operating from the date of the codicil
- If not kept with the will codicils can go missing and a will admitted to probate without the codicil(s)
- Poorly drafted codicils can cause issues with interpreting the will and administration of an estate

Figure 6.5g



You have completed Chapter 6.

EXIT